

POLE LICENSE AGREEMENT

THIS AGREEMENT made and entered into this 16<sup>th</sup> day of November, 1992, by and between ILLINOIS POWER COMPANY, an Illinois Corporation with offices at Decatur, Illinois, hereinafter called Licensor, party of the first part, and Cable Equities of Colorado, Ltd., a limited partnership, hereinafter called Licensee, party of the second part,

WITNESSETH:

WHEREAS, Licensee proposes to furnish community antenna television service to residents of Mt. Vernon, Nashville and vicinity, and will need to erect and maintain aerial cables, wires and associated equipment throughout the area to be served and desires to attach such cables, wires and equipment to poles of Licensor; and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the attachment of said cables, wires and equipment to its poles for the purpose of furnishing CABLE television (CATV) service where, in its judgment, such use will not materially interfere with its own service requirements, including considerations of economy and safety.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

1. The Agreement between Illinois Cable Television Association and Illinois Power Company, dated June 5, 1990, is attached hereto as Exhibit "C" and made a part hereof. In the event of conflict, the provisions of the June 5, 1990 Agreement (Exhibit C) shall control.

2. Before making attachments to any pole or poles of Licensor or to poles belonging to others on which space has been reserved for

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Licensor's use, Licensee shall make application to Licensor's office and receive a permit therefor in the form of Exhibit "A" attached hereto and made a part hereof. Licensor reserves the right to deny the application for any permit which would interfere with Licensor's own service requirements, including without limitation, the foregoing considerations of economy and safety.

3. Licensee shall, at its own expense, make and maintain such attachments in safe condition and in thorough repair, and in a manner suitable to Licensor and so as not to conflict with the use of said poles by Licensor, or by parties using said poles, or interfere with the working use of facilities thereon or which may from time to time be placed thereon.

4. Licensee agrees that Licensor may transfer, relocate, replace, renew or disconnect any of its equipment or facilities, at Licensee's expense, where:

a. In the event that Licensor, in good faith, determines that Licensee must transfer its equipment to substituted poles, Licensor shall give Licensee no less than 45 days written notice of the need to make such transfer. In the event that Licensee fails to make such transfer within the 45 day period, Licensor shall have the right to transfer Licensee's equipment, at Licensee's expense, in accordance with Licensor's requirements.

b. In the event that Licensor, in good faith, determines that considerations of safety or operational necessity require Licensee to relocate, replace, or renew any of its facilities, or to perform any other work which Licensor may require to correct improper clearances between Licensor's and Licensee's equipment, Licensor shall give Licensee reasonable notice of the need to perform such work. In

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the event that Licensee fails to respond accordingly, Licensor shall have the right to perform such work at Licensee's expense.

c. In the event that Licensor, in good faith, determines that an emergency situation exists which places at risk the safety and physical well-being of any persons or property, Licensor shall have the right to immediately and without notice remove, relocate or disconnect, Licensee's equipment and facilities. Licensor agrees, however, that whenever possible and reasonable it shall endeavor to provide Licensee with notice of any action taken pursuant hereto. Licensee shall reimburse Licensor for any reasonable expenses incurred, upon a showing by Licensor of the actual emergency and provided said emergency was not caused by Licensor.

Whenever Licensor performs work pursuant to this paragraph at Licensee's expense, Licensor shall invoice Licensee for all costs, charges, and expenses reasonable incurred in performing such work, and Licensee agrees that it shall pay all amounts so invoiced to Licensor within 30 days of the invoice date.

5. Licensee's cables, wires and equipment in each and every location shall be erected and maintained on Licensor's poles or on poles belonging to others, on which space has been reserved for Licensor's use, in accordance with the rules and regulations of Licensor as now in force or as hereafter may be adopted and in accordance with the latest edition of the National Electric Safety Code, except where the requirements of the Illinois Commerce Commission or other public authorities may be in excess of the requirement of these practices, in which case the requirements of public authorities shall be followed. Drawings marked Exhibits 1, 2, 3, 4, 5 and 6, attached hereto and made a part hereof, are descriptive

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of required construction under some typical conditions, where span lengths are not over one hundred seventy-five (175) feet and voltage between Licensor's conductors does not exceed fifteen thousand (15,000) volts. In no event shall Licensee attach more than one support cable to a pole except as indicated on Exhibit 2 and all cables shall be attached flush with the pole except where extension arms or other construction is deemed desirable by Licensor.

Licensee's distribution cable shall be attached to an appropriate supporting messenger, by approved workmanlike methods. The messenger shall be tensioned and guyed in accordance with accepted standards, and shall be multigrounded. Licensee's service drops shall be installed in a neat and workmanlike manner including the house attachments so as to preserve the best overall appearance of power, telephone and CATV drops through the air and attached to buildings. Service drops shall be tensioned so that sag is not excessive and also so that side pull on the CATV cable messenger is not excessive. CATV service drops are to be installed from the cable away from the pole so as to preserve climbing space on the pole. In special cases, CATV service drops may be installed on the pole, after receiving specific written approval.

6. In the event that the pole or poles of Licensor to which Licensee desires to make attachment are inadequate in the judgment of the Licensor to support the additional facilities or to provide required clearances in accordance with the aforesaid specifications, Licensee agrees to reimburse Licensor for the entire non-betterment portion of the cost and expenses of replacing such inadequate poles with suitable poles, including the full cost, less any salvage recovered, of the extra "height" or "class" of larger poles; unused

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life value of poles removed; cost of removal; and the expenses of transferring the facilities of Licensor from the old to the new poles, as estimated by the Licensor as herein provided. Where, in Licensor's judgment, Licensee's attachments can be accommodated on present poles of Licensor or on poles belonging to others on which space has been reserved for Licensor's use, by rearranging Licensor's facilities thereon, Licensee agrees to compensate Licensor for the full expense for such rearrangement. Licensor will indicate on Exhibit "A" the changes and rearrangement necessary to accommodate the proposed attachments of Licensee and the cost thereof to the Licensee, the cost thereof to the Licensee, the date by which said work will be performed and then return Exhibit A to Licensee. If Licensee still desires to make the attachments, it shall return the Exhibit "A" marked to so indicate and provide payment to Licensor in the amount of the cost for the changes and rearrangements. Licensor will make the required rearrangements and changes after receipt of payment. In the event any strengthening of poles by means of guying is required to accommodate the attachments of Licensee or in the event that Licensor or an existing joint user of a pole to which Licensee has made attachments shall require the space occupied by Licensee's existing attachments, and said pole has not been previously replaced in order to accommodate Licensee's facilities, then the provisions stated above in regard to notification, approval by Licensee and payment for replacement costs shall apply, except that Licensee may elect to remove its attachments from the pole if it does not approve of such replacement.

7. It is understood and agreed that this agreement for joint use of poles by Licensor and Licensee is limited exclusively to poles within Mt. Vernon, Nashville and vicinity, subject to all the terms

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and conditions of this agreement.

8. Wherever used in this agreement, the word "cable television" means a system for transmittal of information by means of electromagnetic, including light or otherwise, from the Licensee's premises to its subscribers' premises, including background music and such other purposes as may be proposed by Licensee which do not require alteration of or addition to the physical plant attached to the poles.

9. Licensor reserves to itself, its successors and assigns, the right to maintain, replace, relocate, and remove its poles and to operate its facilities thereon or on poles belonging to others on which space has been reserved for Licensor's use, in such manner as will enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee, or any customer of Licensee, or any other person, for any interruption of service or for interference with the operation of the cables, wires, and equipment of Licensee arising in any manner out of the use of Licensor's poles. Licensee shall indemnify, protect, defend, and save Licensor, its successors and assigns, harmless from and against any and all claims and demands for damages of every nature and description on account of interruptions to the service of Licensee, or its customers, or any other person, or otherwise, or for interference with the operation of the cables, wires, and equipment of Licensee.

10. Licensee shall submit to Licensor evidence, satisfactory to Licensor, of its authority to erect and maintain its facilities within public streets, highways and other thoroughfares and shall secure and maintain in effect at its expense any necessary consent from state or municipal authorities or from the owners of property to construct and

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maintain facilities at the locations of poles of Licensor which it desires to use. This Agreement does not grant, assign, or transfer the easements of the Licensor to the Licensee nor does it permit the use of such easements by the Licensee under any circumstances. The Licensee is responsible for obtaining permission from the property owners involved for the placement of Licensee's facilities on private property.

11. Licensor, because of the importance of its service, reserves the right to inspect each new installation of Licensee on its poles and in the vicinity of its lines or appliances and to make periodic inspections, semi-annually or more often as plant conditions may warrant, of the entire plant of Licensee; and Licensee shall, on demand but only as provided for in Exhibit "C", reimburse Licensor for the expense of such inspections. Such inspections, made or not, shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.

12. Licensee shall pay to Licensor a rental at the rate stated in Exhibit "C" attached hereto for each pole of Licensor used by Licensee. Said rental shall be payable annually in advance on the first day of January of each year during which this agreement remains in effect. Said advance rental payments shall be based upon the number of poles for which permits are in effect on the first day of December of the preceding year. For pole permits issued during a given year, there will be no charge in the year issued but said payment will begin the next January. However, if after any January pre-payment the Licensee is required to remove a substantial number of its attachments covered by this agreement, the parties agree to negotiate a pro-rata refund based upon the number of months remaining

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in the year.

13. Licensee shall exercise special precautions to avoid causing damage to facilities of Licensor and of other parties supported on said poles; and hereby assumes all responsibility for any and all loss for causing such damage. Licensee shall make an immediate report to Licensor of the occurrence of any damage and hereby agrees to reimburse Licensor for the expense incurred in making repairs. Licensee shall promptly reimburse Licensor for any damages caused to the facilities and other property of Licensor and facilities of others supported on the poles of Licensor resulting from the direct use or presence on such poles of the facilities of Licensee, or from any acts or failure to act on the part of Licensee, its agents, employees, contractors, subcontractors, or customers.

14. Licensee, its successors and assigns, shall indemnify, protect, defend, and save harmless Licensor, its successors and assigns, and any others on whose poles space is reserved for Licensor's use and to which Licensee's equipment is attached, from and against any and all claims and demands for damages to property and injury or death to persons, other than Illinois Power Company employees while on company business including reasonable attorneys' fees, expenses and costs, and including payments made under any worker's compensation law or under any plan for employee's disability and death benefits (including, without limitation, claims and demands which may be asserted by employees, agents, contractors, and subcontractors of Licensor), which may arise out of or be directly caused by the negligence of Licensee in its installation, maintenance or use of Licensor's poles, resulting from (i) the contact of Licensor's equipment with those of Licensee, (ii) the proximity of the

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respective cables, wires, apparatus, and appliances of the parties hereto or other joint users; (iii) any contact of Licensee's equipment with the person and/or property, real or personal, of any third party or parties. The foregoing obligations of Licensee shall apply notwithstanding the placement of Licensee's equipment on Licensor's poles in accordance with the terms of this Agreement and the requirements and specifications of Illinois Commerce Commission Title 83, Illinois Administrative Code, Part 315, or any amendments to or revisions of said Part.

15. Licensee will provide and maintain at its own expense and in such form and with such companies as shall be satisfactory to Licensor, the following insurance:

Commercial General Liability insurance including but not limited to the following hazards:	\$1,000,000 per occurrence Bodily injury and property damage
1. Premises - Operations	
2. Independent Contractors	
3. Products and completed operations	
4. Broad form property damage	
5. Personal injury	
Comprehensive Automobile Liability insurance for owned, hired, and non-owned Vehicles	\$1,000,000 per occurrence
Worker's Compensation	Statutory limits
Employer's Liability	\$500,000 per occurrence

Licensee shall furnish a Certificate of Insurance to Licensor issued by the insurance company or companies certifying that the above insurance coverage has been provided and specifying the inclusive dates of such coverage. Each policy shall also provide that the insurance company issuing each policy shall not cancel or terminate said policy without first giving Licensor 30 days notice of such cancellation or termination.

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All insurance required shall remain in force for the entire life of this Agreement, and during such period of time as is required for Licensee to remove its equipment following the termination of this Agreement for any reason.

16. Licensee may at any time remove its attachments from any pole or poles of Licensor, but shall give Licensor prior written notice of such removal in the form of Exhibit "B", hereto attached and made a part hereof. No refund of any rental will be due on account of such removal.

17. Upon notice from Licensor to Licensee that the use of any pole or poles is forbidden by municipal or other public authorities or property owners, the permit covering the use of such pole or poles shall immediately terminate and the cables, wires, and appliances of Licensee shall be removed within sixty (60) days from the affected pole or poles.

18. In the event Licensee should make any attachments to Licensor's poles without first having obtained and accepted a written permit in the same form as Exhibit "A", attached hereto, and paid the charges incident thereto, the Licensor shall give notice to Licensee and Licensee shall have 30 days thereafter to apply for a permit. If after 30 days notice Licensee has not applied for a permit Licensor shall have the right to remove such attachments without any liability therefor the expense of said removal to be paid by said Licensee within thirty (30) days after receipt of billing therefor from Licensor.

19. If Licensee shall fail to comply with any of the provisions of this agreement including the rules, regulations, and specifications hereinbefore referred to, or default in any of its obligations under

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this agreement or use the attachments for any purpose other than CATV service as previously defined and shall fail within sixty (60) days after written notice from Licensor to correct such default or non-compliance, Licensor may, at its option, forthwith terminate this agreement or the permit covering the poles as to which such default or non-compliance shall have occurred. In case of such termination, a refund of prepaid rentals shall not be made. The remedies provided for in this paragraph are not intended to be exclusive but are in addition to all rights accruing to the Licensor by operation of law upon default of Licensee.

20. Bills for rental, inspections, expenses and other charges under this agreement shall be payable within thirty (30) days after presentation. Nonpayment of bills within said period shall constitute a default of this agreement.

21. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all time in full force and effect.

22. This agreement is subject in all respects to the terms and provisions of the Joint Pole Usage Agreement entered into between Licensor and Illinois Bell Telephone Company, attached hereto, and, in the event of any conflict between the terms and provisions of that agreement and this Agreement, the Joint Pole Usage Agreement shall control. Licensee shall comply with all of the provisions of said Joint Pole Usage Agreement applicable to it. Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Licensor, by contract or otherwise, to others, not parties to this Agreement, to use any poles covered by this

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Agreement; and Licensor shall have the right to continue and extend or modify such rights or privileges. The attachment privileges herein granted shall at all times be subject to such contracts and arrangements. Nothing herein contained shall be construed as affecting or limiting the right of Licensor to make other and additional contracts with other persons, firms, corporations or associations for the use of Licensor's poles and facilities which do not interfere with the right of Licensee.

23. No use, however extended, of Licensor's poles, under this Agreement, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights therein shall be and remain a mere license. Licensor shall have the right in its sole discretion to discontinue maintaining or to remove any of said poles at any time. If prior to the time Licensee's equipment is attached to a pole, Licensor is aware it will be removing or discontinuing maintenance on said pole, Licensor shall so notify Licensee prior to the attachment.

24. This Agreement shall become effective on the date hereof and shall continue for successive terms of one year, subject to termination by mutual agreement of the parties hereto or by either party giving written notice to the other party at least six months prior to the end of any yearly term. It being understood and agreed, however, that if the franchise of the Licensor to use the public streets and highways of Mt. Vernon, Nashville and vicinity or the Joint Pole Usage Agreement between Licensor and Illinois Bell Telephone Company shall at any time terminate, be canceled, or for any other reason cease to be in force or effect, then this Agreement shall be terminated. Upon termination of this Agreement in

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accordance with any of its terms, or the termination of any permit hereunder, Licensee shall within 60 days remove its cables, wires and equipment from all poles of Licensor affected by such termination. If not so removed, Licensor shall have the right to remove them at the cost and expense of Licensee and without any liability therefor.

25. At the time this Agreement becomes effective, as provided in paragraph 24 hereof, Licensee shall furnish bond to Licensor in the amount shown below in form and with surety acceptable to Licensor, to guarantee the payment of all sums which may at any time become due from Licensee, to Licensor under the terms of this Agreement (except such sums as are covered by the insurance provided under Paragraph 15 hereof), which among other things includes rentals, inspection or work performed for the benefit of Licensee under this Agreement and expenses incurred in the removal of attachments pursuant to any of the provisions of this Agreement.

<u>Number of Poles</u>	<u>Amount of Bond</u>
Up to 1000	\$10,000
1001 to 2000	\$20,000
2001 to 3000	\$30,000
etc.	etc.

26. Licensee hereby acknowledges that pursuant to the Illinois Public Utilities Act, Licensor is required, subject to certain exceptions, to obtain from the Illinois Commerce Commission ("Commission") approval of this Agreement, and that this Agreement is by statute deemed void if not approved by the Commission. Licensee further acknowledges that the entry of an order by the Commission denying Licensor's petition for approval of this Agreement shall constitute a prohibition on use of poles by public authorities within

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the meaning of Paragraph 17 of this Agreement and that Licensee shall at its expense remove its cables, wires and appliances from any poles covered by this Agreement within 30 days of receipt from Licensor of notice of entry of such an order. In consideration of receiving permission to proceed with preparations for making attachments prior to Commission approval of this Agreement, Licensee agrees, in the event such approval is denied, to reimburse Licensor for any costs incurred by Licensor prior to the date of such denial in rearranging or altering its facilities to permit attachment of Licensee's facilities.

27. Licensee agrees and undertakes to cooperate fully with Licensor in obtaining Commission approval of this Agreement, including, without limitation, to provide relevant engineering and financial information reasonably requested by Licensor for presentation as evidence in support of Licensor's petition for approval of this Agreement, and to provide appropriate officers, employees or agents upon Licensor's request to appear as witnesses on behalf of Licensor in support of such petition.

28. Licensee agrees to reimburse Licensor for reasonable legal expenses (defined as fees and disbursements charged Licensor by Licensor's counsel) incurred by Licensor in seeking Commission approval of this Agreement. Licensor shall present a bill or bills for these expenses to Licensee each of which shall be deemed a "bill for.....other charges" subject to Paragraph 20 of this Agreement. Licensee shall not be obligated to reimburse Licensor for the cost of time spent and expenses incurred by Licensor's employees in seeking Commission approval of this Agreement.

29. Licensee agrees that, in the event the Commission enters an

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order denying approval of Licensor's petition for approval of this Agreement, Licensee's obligations under Paragraphs 26 and 28 above shall nevertheless remain binding and enforceable.

30. Licensee shall not assign, transfer or sublicense the privileges hereby granted without the prior written consent of Licensor, which consent shall not be unreasonably withheld.

31. Subject to the provisions of Paragraph 30 hereof, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

32. This Agreement shall be interpreted and governed by the laws of the State of Illinois.

33. The parties designate the following representative to receive any and all notices provided for in this Agreement. All notices shall be given in writing and delivered personally or by U.S. Mail. If notice is delivered personally, it shall be deemed given when delivered. If notice is mailed, it shall be deemed given two calendar days after the date of mailing, properly addressed with postage thereon prepaid.

**Licensee Representative:**

Cable Equities of Colorado, Ltd.  
2409 Broadway  
Mt. Vernon, IL 62864

Copy to: Rifkin & Associates, Inc.  
Attn: Legal Department  
360 S. Monroe Street, Suite 600  
Denver, CO 80209

**Licensor Representative:**

Illinois Power Company  
500 South 27th Street  
Decatur, Illinois 62525  
Attn: Law Department

Either party may, by written notice, change the name and/or address of its representative.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

Licensee Initials



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## LICENSEE

*Roger A. Seltzer*  
Signature

Roger A. Seltzer

Typed Name

Vice President of the General Partner  
Title

## ILLINOIS POWER COMPANY

*Dennis McEnaney*  
Signature

Dennis McEnaney

Typed Name

Area Manager  
Title